

### **REMARKS/ARGUMENTS**

The rejections presented in the Office Action dated August 23, 2006 (hereinafter Office Action) have been considered. Claim 5 has been canceled. Claims 1-4 and 6-94 remain pending in the application. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Claims 5, 18, 23, 36, 38, 50, 56, 58, 63, 65, 70, 85 and 88 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form. The Applicants thank the Examiner for identifying allowable subject matter. Independent claims 1, 39, 59, 73, 90, 92, and 94 have been amended to recite the patentable subject matter of claim 5.

Claims 3-5, 22, 51, 64-66, 71, 80, 83, 88 and 89 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter.

Without acquiescing to the Examiner's reasons for rejection of claims 3-5, to expedite allowance of the application, claims 3 and 4 have been amended. Claim 5 has been canceled.

The Office Action states that the term "near non capture" is vague in claims 22, 51, 71, and 83. Applicants respectfully disagree. Applicants are afforded a great deal of latitude in how they choose to define their invention, so long as the terms and phrases used define the invention with a reasonable degree of particularity and distinctness (*see, e.g.*, MPEP § 2173.02). The disclosure provides an adequate basis for one skilled in the art to understand the meaning of the term "near non capture" used in claims 22, 51, 71, and 83. For example, at page 41, line 16 of the disclosure, the term "near non capture" is described as a captured response that is delayed. Applicants assert that the discussion in the disclosure at page 41 and elsewhere provides sufficient information for one skilled in the art to ascertain the meaning of the term "near non capture" in the rejected claims.

The Office Action states that the phrase "about 50% of a capture response template peak" recited in claim 61 is vague since the template peak is a relative peak. Applicants respectfully disagree with this analysis. A captured response template may comprise, for

example, a sequence of samples or feature points of a cardiac signal representing a captured response. (*see, e.g.*, page 27, line 28 of the disclosure) After a template of a captured response is formed, the template values, including the peak value, are fixed values and are not “relative.”

The dependency of claims 64-66 has been changed so that these claims now depend from claim 63. Claim 63 recites a first, a second, and a third classification window.

Claim 80 has been amended to recite that the control processor is configured to adapt the reference.

Claim 88 has been amended to recite that the plurality of classification windows referred to in claim 73 comprises first, second, and third classification windows.

The dependency of claim 89 has been amended so that claim 89 depends from claim 88 rather than claim 73.

Claims 1, 3, 4, 6-9, 13, 14, 16, 17, 19-22, 24, 25, 59, 60-62, 64, 66, 73, 75, 78-84, 90 and 94 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,431,693 to *Schroeppel* (hereinafter “*Schroeppel*”). Claims 1, 3, 4, 6-9, 12, 16, 17, 19, 20, 22, 39, 41-44, 46-49, 51, 73-76, 78-83, 86, 87, 90, 92 and 93 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 7,027,868 to *Rueter et al.* (hereinafter “*Rueter*”). Claims 1, 3, 4, 6-9, 13, 14, 16, 17, 19, 20, 22, 39, 41-43, 47-49, 51, 59, 73, 75, 78-83, 86, 87, 90 and 92-94 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Publication No. 2002/0183798 by *Vonk* (hereinafter “*Vonk*”). Claims 39, 41-43, 48, 49, 51, 52, 53, 92 and 93 stand rejected under 35 U.S.C. §102(b) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over *Schroeppel*. Claims 2, 40, 77 and 91 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Schroeppel*, *Rueter*, or *Vonk*. Claims 10, 11, 15, 26-35, 37, 45, 52-55, 57, 67, 68, 69, 71 and 72 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Schroeppel*, *Reuter*, or *Vonk*.

Applicants do not acquiesce to the particular rejections of these claims, the Examiner’s characterization of the asserted art or Applicants’ claimed subject matter, or to the Examiner’s application of the asserted art or combinations thereof to Applicants’ claimed subject matter. However, in the interest of expediting allowance of the application,

independent claims 1, 39, 59, 73, 90, 92, and 94 have been amended to include the allowable subject matter of claim 5. Claim 5 has been canceled. Accordingly, each of the independent claims, as amended, and any claims dependent therefrom, contain limitations not taught or suggested by any of the above references, alone or in combination.

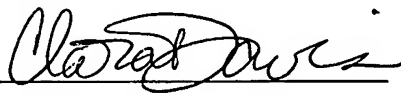
All pending claims are now in condition for allowance and Applicants respectfully request notification of allowance of this application.

Authorization is given to charge Deposit Account No. 50-3581 (GUID.045PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the undersigned attorney of record invites the Examiner to contact her to discuss any issues related to this case.

Respectfully submitted,

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